THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.12008 of 2005

Date: 19.08.2005

Between:

Satyaranjan Sahu, S/o Gopinantha Sahu, Aged about 32 years, R/o Bijiapura, Berhampur, Ganjam District, Orissa.

… Petitioner

and

Deputy Transport Commissioner, Srikakulam, Srikakulam District.

… Respondent

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.12008 of 2005

JUDGMENT:

The order of the Deputy Transport Commissioner, Srikakulam, in proceedings dated 31-3-2005, whereby the tax demanded of Rs.2,75,240/- was confirmed and the petitioner directed to pay the said amount within seven days from the date of receipt of demand notice, is the subject matter of challenge in this writ petition.

2. Facts, to the extent necessary for the purpose of this writ petition, are that the petitioner is the owner of a bus, bearing Registration No.TML 5974, said to be covered by a temporary stage carriage permit to ply in the State of Orissa, from Ghatimukundapur to Berhampur via Icchapuram, Patrapur, Jarada and back. This permit, is said to have been granted by the Under Secretary, State Transport Authority, Orissa, and to be valid for the period from 25-11-2004 to 23-3-2005. It is the case of the petitioner that the total distance of the said route is 59 Kms out of which 12 Kms lie within the state of Andhra Pradesh and that the vehicle was permitted to operate four singles per day thus covering a total distance of 236 Kms per day in the entire route including 48 KMs (12 Kms x 4 trips) in the State of Andhra Pradesh. The petitioner contends that the extent of 12 Kms, situated in the state of Andhra Pradesh, is in the nature of an enclave.

3. The Motor Vehicles Inspector, Palasa checked the petitioner's stage carriage on

11-3-2005 and seized the vehicle as it was plying between Berhempur in Orissa State and Ghatimukundapur in the State of Andhra Pradesh without counter signature, on the permit, by the State Transport Authority of Andhra Pradesh and without payment of Tax in the State of Andhra Pradesh. The vehicle was being operated beyond Ghatimukundapur upto D.Govindapuram wherein unauthorized night halts were being made. Petitioner filed W.P.No.5689/05 and this Court, by order dated 18-3-2005, directed the respondent to release the vehicle subject to the condition that the vehicle should not be alienated or transferred, that the spare parts of the vehicle should not be removed, that the vehicle should be produced whenever required by the competent authority, that the taxes due, if any, should be paid and the original documents should also be produced. By order dated 29-3-2005, the earlier order was clarified requiring the petitioner to pay tax of Rs.2,75,240/- for release of the vehicle and that the said amount should be refunded to the petitioner if, ultimately, he succeeded before the authorities.

4. The respondent issued show cause notice dated 22-3-2005 proposing to collect tax of Rs.2,75,240/- and penalty as per rules as the petitioner's vehicle was operating since 3-12-2003 without counter signature of the State Transport Authority of Andhra Pradesh and without payment of Tax to the State of Andhra Pradesh. The petitioner submitted his explanation on 22-3-2005 stating that the bus was operating on the basis of the temporary permit based on the Orissa Route Permit conditions and therefore was not liable to Tax in the State of Andhra Pradesh. The impugned order dated 31-3-2005 was passed confirming levy of tax of Rs.2,75,240/- at Rs.948/- per seat per quarter for 53 seats and 16 standing passengers. The respondent held that since Ghatimukundapur was in the State of Andhra Pradesh and Berhempur in the State of Orissa, the permit was required to be counter signed by the State Transport Authority of Andhra Pradesh, and that the vehicle was making unauthorized night halts at D.Govindapuram without permit.

5. The Deputy Transport Commissioner and Secretary, Regional Transport Authority, Srikakulam, in his Counter affidavit, stated that the vehicle was plying on the route GhatiMukundapur to Berhampur since 3-12-2003 without obtaining counter signature, from the State Transport Authority in Andhra Pradesh, as required under Section 88(1) of the Motor Vehicles Act and without payment of tax in the State of Andhra Pradesh. Petitioner's contention that the route in question is an enclave route was denied as one of the termini namely Ghatmukhandapur was in Andhra

Pradesh. Respondent contends that it is only when both the termini lie in Orissa and a portion of the route, not exceeding 16 Kms, lies in Andhra Pradesh, can it be classified as an enclave route and since the route in question is not an enclave route the petitioner should have obtained counter signature on the permit from the State Transport Authority in Andhra Pradesh. The respondent further contends that the petitioner was well aware of this requirement of obtaining counter signature since in T.P. No.283/04, issued by the under Secretary, State Transport Authority, Cuttack, Orissa, it was clearly mentioned at Column 7 that under the provisions of Section 88 of the Motor Vehicles Act the permit would be valid only when it is counter signed by the other state authority and on the reverse of the permit it was clearly mentioned that the operator should submit Tax Clearance Certificate within 45 days from A.P. authorities. It is also stated in the counter affidavit that the petitioner never applied for nor obtained tax clearance certificate from the authorities of Andhra Pradesh, despite there being a clear mention in the permit requiring him to do so, and since the route in question is not an enclave, the provisions of G.O.Ms.No.397 dated 11.12.1980 are not applicable. The Certificate of M.R.O., Kanchili is relied upon in support of the contention that Ghati Mukundapur lies in Kanchili village of Srikakulam District. The other contention of the petitioner that, at best, tax of Rs.414/- per seat per quarter can only be levied, in terms of G.O.Ms.No.152 dated 1-12-2001, is also denied. Explanation III of the said G.O. is relied upon whereunder it is prescribed that the daily kilometerage with respect to a vehicle plied without permit should be reckoned as more than 320 K.Ms. in which case the rate of tax leviable is Rs.948/- per seat per quarter. It is also stated that when a vehicle is plied without the counter signature of the Transport Authority of the State, it amounts to plying the vehicle without permit and therefore, as per G.O.Ms.No.152 dated 1-12-2001, the tax leviable was not Rs.414 as contended by the petitioner but Rs.948/-. Respondent further contends that the petitioner's vehicle has been running only on the basis of temporary permits granted by the Orissa State Transport Authority, and in case the petitioner's vehicle is released, the vehicle and its owner would not be available for realization of tax dues, since the vehicle belongs to Orissa. Reliance is placed on Section 8 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 wherein it is stipulated that the vehicle shall not be released unless tax due in respect thereof is paid.

6. The contentions of the respondent, are summarised, in paragraph –17 of the counter affidavit and read thus:-

"(a) The route in question is an Inter state route and for plying a stage carriage on the route countersignature on the permit is required U/s 88(1) of M.V.Act.

(b) The route is not an enclave route as contended by the petitioner as one termini namely Ghatimukundapur lies in A.P.

(c) The contention of the petitioner that he is not aware of the fact that countersignature is required and that tax is payable to A.P. are not tenable since it was clearly mentioned in T.P.No.283/04 that countersignature of the permit should be obtained and that Tax clearance Certificate (TCC) should be obtained from A.P. Authorities.

(d) The petitioner did not chose to mention in his affidavit that there was a clear direction in the temporary permit itself to him to obtain Tax Clearance Certificate (TCC) from the A.P. Authorities. He neither paid the tax nor obtained Clearance Certificate.

(e) There is no order from Government of A.P. and Govt. of Orissa formulating this particular route as required U/s 68(3) (ca) of the M.V.Act which has been upheld by the Hon'ble High Court of A.P. in the case of N.Swarna Latha Vs. Managing Director APSRTC, Hyderabad and others 2001(4) ALD (DB). Operation of the vehicles without obtaining countersignature on the permit and without concurrence of the State Transport Authority, Hyderabad is violative of the provisions laid down in Section 88(5) and 88(7) of the M.V. Act 1988.

(f) As per explanation III in G.O.Ms.No.152 dated 1-12-2001, whenever a vehicle is operated without a permit, the total daily kilometerage should be reckoned as above 320 Kms. As such the tax leviable in the instant case is Rs.948/- per seat per quarter (pspq)"

7. Section 68(3)(ca) of the Motor Vehicles Act, 1988 empowers the Government to formulate routes for plying stage carriages. The validity of this provision came up for consideration before a Division Bench of this Court in "**Swarnalatha Vs. Managing Director, APSRTC, Hyderabad**" and, while upholding its constitutional validity, this Court held that it is for the State Government to formulate the routes and that the powers of transport authorities are subject to the routes so formulated by the State Government. In the absence of the route between Ghatimukundapur and Berhampur being formulated as a route under Section 68(3)(ca) of the Motor Vehicles Act, 1988, the petitioner was not entitled to operate his vehicle in the State of Andhra Pradesh without obtaining counter signature on the permit from the State Transport Authorities of Andhra Pradesh.

8. Section 88 of the Motor Vehicles Act, 1988 relates to Validation of permits for use outside the region in which it is granted and under sub-section (1) thereof, the permit granted in any one State shall not be valid in any other State unless countersigned

by the State Transport Authority of that other State. Section 88(5) of the Motor Vehicles Act, 1988 requires counter signature on the permits in respect of such routes and under sub-section (7), the Regional Transport Authority of one region may issue a temporary permit to be valid in another State only with the concurrence of the State Transport Authority of that other State. It is thus clear that in the absence of concurrence of the State Transport Authorities in Andhra Pradesh or in the absence of their counter signature being obtained on the temporary permits issued by the Transport Authorities in the State of Orissa, the temporary permit issued in favour of the petitioner by the Orissa State Transport Authority is not valid within the State of Andhra Pradesh and that the petitioner was not entitled to ply his vehicle, even if it be for a short distance, within the State of Andhra Pradesh. The contention of the learned Counsel for the petitioner that the route is an enclave route cannot be accepted in the absence of any such formulation by the Government under Section 68(3)(ca) of the Motor Vehicles Act. The petitioner is also not entitled for the benefit of G.O.Ms.No.397, dated 11.12.1980, since the route is not an enclave route. There is substantial force in the contention of the learned Government Pleader that the petitioner was not unaware of this statutory requirement, since it was made clear in the Temporary permit itself that its validity would be subject to counter signature being obtained thereon as also a tax clearance certificate being obtained from the State Transport Authorities of Andhra Pradesh. Since the petitioner plied his vehicle in the State of Andhra Pradesh, without obtaining counter signature and tax clearance certificate from the Andhra Pradesh State Transport Authorities, the respondent is justified in initiating action against the petitioner for contravention of the statutory provisions of the Motor Vehicles Act, 1988.

9. Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 relates to levy of tax on Motor Vehicles and under sub-section (1) thereof the Government may, by notification, from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place, in the State of Andhra Pradesh. Sections 7 and 8 of the Motor Vehicles Taxation Act read as under:

7: Recovery of tax, penalty or fine as an arrear of land revenue:-

Any tax, penalty or fine due under this Act may be recovered in the same manner as an arrear of land revenue and the motor vehicle, in respect of which the tax, penalty or fine is

due, or its accessories may be distrained and sold, whether or not such motor vehicle or accessories are in the possession or control of the person liable to pay the tax, penalty or fine.

8.Power to seize and detain motor vehicles in case of non-payment of tax:-

Without prejudice to the provisions of Sections 6 and 7, where any tax due in respect of any motor vehicle has not been paid as specified in Section 4, such officer, as may be prescribed, may seize and detain the motor vehicle in respect of which the tax is due under this Act and for this purpose take or cause to be taken any steps he may consider necessary for the temporary safe custody of the vehicle, until the tax due in respect of the vehicle, is paid.

10. Section 8 empowers the authorities to seize and detain the vehicle till the tax due in respect of the vehicle is paid. Exercise of the statutory powers, conferred under Section 8, by the respondent, in detaining the petitioner's vehicle for non-payment of tax due, cannot be said to be either illegal or invalid.

11. The Government of Andhra Pradesh, in exercise of the powers conferred under Section 3 of the Taxation Act 1963 prescribed revised rates of tax as notified in G.O.Ms.No.152 Transport Roads and Buildings (TR II) dated 01.12.2001. In respect of vehicles, permitted to ply as ordinary services, for every passenger which the vehicle is permitted to carry and where the total distance permitted to be covered by the vehicle in a day does not exceed 100 Kms, the tax liable to be paid is Rs.414/- per seat per quarter. However, where that total distance exceeds 320 Kms, the tax payable is Rs.948/- per passenger per quarter. Explanation III(ii) provides that the distance permitted to be covered by a vehicle in a day shall, in case of Motor Vehicles, plying without a permit granted under the Motor Vehicles Act, 1988, be reckoned as above 320 Kms.

12. The petitioner contends that since its vehicle was permitted to run four single trips each day, the distance covered in each trip within the State of Andhra Pradesh is 12 Kms the total distance it plied within the state of Andhra Pradesh is only 48 Kms per day, which is less than 100 Kms, and therefore the tax payable is Rs.414/- per seat per quarter. The respondent, however, contends that since the vehicle was plying without a permit, in accordance with explanation III (ii) of G.O.Ms.No.152, dated 01.12.2001, the distance covered is required to be reckoned as above 320

Kms and as such the tax payable per seat per quarter is Rs.948/-. While it may be true that the vehicle belonging to the petitioner was covered by a temporary permit issued by the Transport Authority of Orissa, the fact remains that, in the absence of counter signature on the said permit by the State Transport Authorities of Andhra Pradesh, it has to be held that the vehicle was plying without a permit in so far as the distance covered by it within the State of Andhra Pradesh is concerned. The distance has, therefore, rightly been reckoned, under Explanation III(ii) of G.O.Ms.No.152, dated 01.12.2001, as 320 Kms and therefore the respondent is justified in levying tax at Rs.948/- per seat per quarter. Since the vehicle was plying unauthorisedly from 03.12.2003 till 23.03.2005 tax was levied at Rs.948/- per seat per quarter for a total number of 67 passengers and the petitioner was directed to pay a sum of Rs.2,75,240/-.

13. The order impugned in this writ petition is valid, the challenge thereto by the petitioner herein fails and the writ petition is accordingly dismissed. There shall be no order as to costs.

_____

B. SUDERSHAN REDDY, J

Date: .08.2005

_____

(RAMESH RANGANATHAN, J

MRKR